



**Office of Appeals
U.S. Department of Housing and Urban Development
Washington, D.C. 20410-0001**

In the Matter of:

Alice Day,

Petitioner.

HUDOA No. 10-H-CH-AWG76
Claim No. 78-0107923-0B

Alice Day
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Rawlins, WY 82301

Pro se

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For the Secretary

DECISION AND ORDER

On April 19, 2010, Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "Secretary"). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts owed to the United States government.

The administrative judges of this Office are designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if contested by a debtor. This hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. §17.170. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). In addition, Petitioner may present evidence that the terms of the repayment schedule are unlawful, would cause an undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. *Id.* Pursuant to 31 C.F.R. §285.11(f)(4), on April 20, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision. (Notice of Docketing, Order, and Stay of Referral, dated April 20, 2010.)

Background

On February 3, 1997, Petitioner executed and delivered to Statewide Mortgage Company an installment note in the amount of \$12,500.00 for a property improvement loan ("Note") that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec'y Stat. ¶ 2; Sec'y Stat., Note.) Petitioner failed to make payments as agreed in the Note, and as a result, Statewide Mortgage Company assigned the Note to the United States of America in accordance with 24 C.F.R. § 201.54. (Sec'y Stat. ¶ 3.)

Petitioner is currently in default on the Note and the Secretary has made efforts to collect this alleged debt from the Petitioner, but has been unsuccessful. (Sec'y Stat. ¶ 4.) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Secretary in the following amounts:

- (a) \$8,798.50 as the unpaid principal balance as of April 30, 2010;
- (b) \$1,545.68 as the unpaid interest on the principal balance at 5% per annum through April 30, 2010; and
- (c) interest on said principal balance from May 1, 2010 at 5% per annum until paid.

(Sec'y Stat. ¶ 5; Sec'y Stat. Ex. B ¶ 4.)

In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD, but did not do so. (Sec'y Stat. ¶ 7.) Petitioner provided a pay statement for the pay period ending on March 31, 2010. (Pet'r's Hr'g Req.) The Secretary proposes a repayment schedule of \$423.83 bi-weekly or 15% of Petitioner's disposable pay. (Sec'y Stat. ¶ 8.)

Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner bears the burden of proving, by a preponderance of the evidence, that no debt exists or that the amount of the alleged debt is incorrect. Petitioner may also present evidence that the terms of the repayment schedule are unlawful, would cause an undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. 31 C.F.R. § 285.11(f)(8)(ii).

Petitioner does not dispute the existence of the debt. Rather Petitioner claims that the proposed repayment schedule would create a financial hardship. Petitioner states:

"I am the sole wage earner in the household. My husband is disabled and has been turned down for disability. He is on 17 different medications plus oxygen [sic]. We are raising our granddaughter. She has ADD and takes medication. My son and daughter-in-law are now un-employed [sic] so I am paying their utility costs. I myself have had 2 major back surgeries [sic] in the last 2 years but I work 3 jobs to keep us afloat."

(Pet'r's Hr'g Req.) Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. *In re Shone Russell*, HUDOA No. 09-H-NY-KK15 (June 25, 2009) (citing *In re Raymond Kovalski*, HUDBCA No. 87-1681-G18 (December 8, 1986)). However, the existence of financial hardship requires a mitigation of the amount of the garnishment allowable by law. 31 C.F.R. §§ 285.11(k)(3). In support of her financial hardship claim, Petitioner submitted a pay statement from her employer along with various bills and cancelled checks. (Pet'r's Hr'g Req.; Pet'r's Doc. Evid.)

Petitioner's disposable income for administrative wage garnishment can be calculated by deducting health insurance premiums and any amounts required by law to be withheld from her gross pay—including social security taxes and withholding taxes, and excluding amounts withheld pursuant to a court order. 31 C.F.R. § 285.11(c). The pay statement submitted by Petitioner reflects a monthly gross pay of \$3,848.64 and allowable deductions totaling \$1,023.14 (Social Security withholding, \$224.89; federal income tax, \$487.55; Medicare withholding, \$52.60; and medical insurance (including dental and vision), \$258.10. (Pet'r's Hr'g Req., Pay Statement.) After deducting Petitioner's allowable deductions from her gross pay, Petitioner's disposable income totals \$2,825.50. Petitioner claims that the overtime pay shown on this pay statement is, "not normal—it was a one time incident." (Pet'r's Hr'g Req. Attach. Financial Stat.) However, since Petitioner failed to submit evidence to substantiate what her usual monthly income is, her disposable income will be calculated based upon the information provided on the pay statement. Petitioner also works as a janitor for two churches and earns an average of \$525.00 monthly after allowable deductions. (Pet'r's Hr'g Req. Attach. Financial Stat.) Accordingly, Petitioner's disposable income totals \$3,350.50.

Petitioner submitted bills and receipts for the following monthly expenses: home repair loan, \$96.00; medical care loan, \$100.00; energy bill, \$104.59 (average); and auto insurance, \$172.00. (Pet'r's Doc. Evid.) In addition, this Office has determined that credit may be given for certain essential household expenses, such as rent, and food, where Petitioner has not provided bills or other documentation, yet the financial information submitted by Petitioner...[was found to be] generally credible...." *In re David Herring*, HUDOA No. 07-H-NY-AWG53 (July 28, 2008) (citing *In re Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). Thus, consistent with *Herring* and *Loera*, Petitioner will receive credit for with her alleged monthly expenses for: mortgage, \$386.00; homeowner's insurance, \$53.00; utilities (water, gas, and trash collection), \$191.00; gas for her car, \$80.00; and food, \$830. (Pet'r's Doc. Evid., Debt Resolution Program Financial Statement.)

Petitioner also included the following undocumented monthly expenses: phone, \$230.00; since you're addressing the credit card bill you should list it here with the monthly amount; and TV, \$86.28. (Pet'r's Doc. Evid. Debt Resolution Program Financial Statement.) These expenses are not considered essential living expenses and reflect a living standard that can be adjusted downward to repay Petitioner's unpaid debt to HUD. See, *In re Howard G. Casey*, HUDBCA No. 03-C-CH-AWG08 (December 27, 2002). As a result, Petitioner's alleged expenses for her New York Life credit card and television service will not be included as essential to Petitioner's household expenses. Furthermore, with regards to the telephone service, although a telephone service may be considered a utility, it is unclear whether the \$230.00 monthly expense claimed

by Petitioner is solely for land line use, which is an essential household expense, or whether the telephone expense includes internet or cellular phone services, neither of which are essential household expenses. *See, In re Richard Johnican*, HUDOA No. 09-H-CH-AWG07 (February 9, 2009). Thus, Petitioner will only be credited \$175.00 for her telephone service as an essential household expense.

Petitioner raised the issue of including, as a monthly expense, a bill for her late mother-in-law's funeral expenses and property taxes and utilities for her late mother-in-law's home since her son and daughter-in-law who live in the home are currently unemployed. These expenses are considered essential household expenses for Petitioner's mother-in-law, not for Petitioner. Hence, such expenses will not be credited towards Petitioner's monthly expenses and will not be considered when calculating Petitioner's essential household expenses.

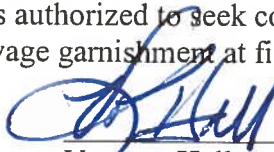
Petitioner's monthly disposable income of \$3,350.50, less her essential expenses to cover basic subsidies of \$2,187.59, leaves Petitioner with a remaining balance of \$1,162.91. A 15% garnishment rate of Petitioner's disposable income would equal \$502.58 monthly, and leave Petitioner with \$660.33 monthly for additional household expenses, an otherwise sufficient amount to cover miscellaneous expenses incurred on a monthly basis by Petitioner. Accordingly, I find that Petitioner has not submitted sufficient documentary evidence to substantiate her claim that administrative wage garnishment of her disposable income, in the amount sought by the Secretary, would cause financial hardship.

Finally, Petitioner states "I am more than willing to start making payments on the siding if you will send me payment coupons. I really cannot afford \$348.00 per month *but would be willing to pay \$200.00 per month.*" (Emphasis added.) (Petitioner's Statement, dated July 7, 2010.) While Petitioner may wish to negotiate repayment terms with the Department, this Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may want to discuss this matter with Counsel for the Secretary or Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152. Petitioner may also request a review of her financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

ORDER

For the reasons set forth above, this Office finds that the debt that is subject of this proceeding is legally enforceable against Petitioner in the amount of fifteen (15) percent of Petitioner's disposable income. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment at fifteen (15) percent of Petitioner's income at \$502.58 per month.



Vanessa Hall
Administrative Judge

August 18, 2010